

120

**PLAINTIFFS' NARRATIVE SUMMARY OF THE JUNE 19, 2002
DEPOSITION OF LAWRENCE MARDER**

SEP 13 2002

FILED

JOSEPH W. SKLENIEWITZ, CLERK

CASE #

02-C-48-S

I am the president of TMP International. 4:19-22. I am the vice-president of the board of directors of TMP Worldwide, which is the parent corporation of Todd McFarlane Productions, Todd McFarlane Entertainment, TMP Asia and TMP Europe. 6:12-7:6. Todd McFarlane is the sole owner of TMP Worldwide. 110:7-9. TMP International is a manufacturer of toys. 4:23-24. The industry standard royalty that TMP International pays licensors can be anywhere from 5 to 12 percent. 109:13-18. Todd McFarlane Productions produces comic books. 8:1-3. Todd McFarlane Entertainment produces movies and animation. 8:4-6.

I started working in the comic book industry in 1984. 9:6-8. In 1988, I went to the meeting which led to the creation of the creators bill of rights. 17:10-19. The creators bill of rights is a document drafted by a bunch of creators talking about their inherent rights vis-à-vis publishers. 48:21-49:3. In 1988, I dictated the creators bill of rights to Scott McCloud from his handwritten notes and he typed it. 79:24-80:6. I signed on to the creators bill of rights. 49:4-11.

I was executive director of Image Comics from December 1993 to September 1999. 25:3-5. Todd McFarlane was the president of Image during the entire time that I was executive director. 76:24-77:5. While I was executive director of Image, Image did not ever hold or take possession of any of the intellectual property rights to any of the comic books that it published. 31:2-6. Image did not write the copyright or trademark notices on the materials it published. 44:4-10. With regard to copyright or trademark notices, Image would produce according to the licensor's wishes and include what the licensor told Image to include.

44:11-22. Todd was my contact person at Todd McFarlane Productions. 46:19-21. Image wrote checks to Todd McFarlane Productions at Todd's request. 46:24-47:2.

In September 1999, I went to work for Todd McFarlane. 26:1-2. From October 1999 to December 2001, I was president of operations of Todd McFarlane Productions. 26:5-9. I changed jobs from Image to Todd McFarlane Productions because Todd asked me to. 26:10-14. I have reported to Todd since I started at Todd McFarlane Productions. I have probably spoken to Todd every day from the time I left Image to the present. 73:8-13. When I was at Image, I would speak with him from once a week to once a month. 73:14-16.

I first met Neil Gaiman in 1992. 28:12-14. In 1993, Neil was well known in the comic book business. 47:10-48:8. He was the guest of honor at the 1993 Chicago Comicon, a comic book convention. 28:23-29:3. Neil created the Angela miniseries that was published by Image Comics. 30:2-5. Image published trade paperbacks, including the Angela miniseries, with stories that were written by Neil. 31:18-22.

In 1996, I was asked to initiate a dialogue between Todd and Neil. 53:17-54:1. I was asked to determine some sort of schedule for Neil to receive royalties for the usage of Angela, Medieval Spawn and Cogliostro. 54:9-55:5. We were trying to establish the terms of Neil's DC Comics contract and define what rights Neil may have had under his DC Comics contract so we could match Neil's DC Comics contract. 55:13-20.

I do not recall who asked me, but my guess would be that I called Neil and said "It's my understanding that I should try . . . to bring everybody to some sort of terms and that I was willing to give it a try." 54:3-8. I asked Neil if I could see the relevant parts of Neil's

DC Comics contracts and he sent me some materials, which I submitted to Todd. 56:21-57:2. Exhibit 38, which is a November 6, 1996 fax from Neil to me, had pages of DC Comics contracts attached to it. 81:12-82:17.

It was my understanding that Neil and Todd were looking to put in place a royalty structure similar to Neil's DC Comics agreement. 60:9-13. My goal was to draft a royalty structure between Neil and Todd that came as close as possible to Neil's DC Comics agreement. 60:20-24. I was trying to set up a royalty agreement that would match Neil's agreement with DC Comics. 58:3-6.

I prepared a worksheet of the terms of Neil's DC Comics contracts and sent it to Todd along with the contract excerpts that Neil had sent me. 57:2-9. Exhibit 39 was my best effort to extrapolate the contracts that Neil had forwarded to me and the information that he had given me. 85:8-15. Todd dictated a counterproposal. 58:15. Everything below the phrase "creator royalties" in Exhibit 42 was dictated to me by Todd. 98:2-25. I do not recall any discussion with Todd concerning any relationship between the proposal in Exhibit 42 and the DC Comics contracts. It was simply a counterproposal. 99:4-11. Exhibit 45 is a memo dictated to me by Todd. 100:25-101:4. I received a letter from Neil's counsel rejecting the whole thing in the spring of 1997. 63:18-22.

Neil and Todd met at the Procon comic book convention in Oakland in May 1997. 69:15-22. I was on the board of directors of Procon and asked Neil to be the keynote speaker. 70:7-14. The keynote speaker at Procon was generally someone in the industry that other creators might have an interest in hearing what they have to say. 70:14-16.

The last time I spoke with Neil was in 1999. 74:17-25. I believed that things had been worked out between Todd and Neil and was surprised when Neil called me in 1999 and said that it hadn't been worked out. 72:5-18.